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ON
THE 1996 IGC
AND THE EFFECTIVENESS OF THE UNION

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The Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

1. The Court of Justice
2. The Commission
3. The Court of Auditors, ESC and COR
4. Differentiated integration
5. The common foreign and security policy
6. The role of the national parliaments
7. The hierarchy of Community acts
8. Codecision procedure
9. CJHA
10. European citizenship
11. WEU, security and defence
12. Public services
13. Social policy
14. The European Parliament
15. The European Council
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17. The budget and the IGC
18. The IGC and transparency
19. Subsidiarity and the allocation of powers
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25. The 1996 IGC and the effectiveness of the Union
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35. Non-discrimination on sexual grounds
36. EU enlargement
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BRIEFING ON THE 1996 IGC AND THE EFFECTIVENESS OF THE UNION

I. SUMMARY

Tackling the problems relating to the operation of the Institutions of the Union, often closely linked to the notions of democracy, transparency and cohesion, will be one of the main aims of the revision of the Treaty of Maastricht. 'They are in fact mutually connected: democracy withers if it does not operate effectively; and effectiveness is pointless without democracy. Otherwise democracy becomes nothing more than technocracy.'¹

As far as the institutions are concerned, it is primarily the European Parliament, the Commission and the Council which are looking in detail at the lack of effectiveness and ways of improving it.

The lack of effectiveness is particularly apparent in the case of the second and third pillars, which are based on intergovernmental cooperation and where Community bodies are involved to only a limited extent. However the complex and slow procedures in first pillar matters have also been criticized.

The Reflection Group considers that greater efficiency and even the simplification of legislation and the procedure for implementing it is vital to counter the alienation of citizens from the Union.

All the Member States agree that the Union must be made more effective. However, views differ on the areas in which greater effectiveness is required and on how it should be achieved. Most of the Member States nonetheless advocate extending qualified majority voting in the Council, particularly in the area of CFSP and even more so for policy on justice and home affairs.

With regard to legislative procedures, most Member States feel that greater involvement of the European Parliament in the decision-making process must go hand in hand with a reduction in the number of procedures, namely codecision, assent and consultation. The codecision procedure and, in particular, conciliation, should be simplified.

¹ Commission report on the operation of the Treaty on European Union (SEC(95)731 final, paragraph 5).

II. THE AGENDA FOR THE CONFERENCE

How to improve the effectiveness of the operation of the European Union, particularly with a view to its enlargement, is one of the main problems facing the 1996 ICG. **Article B of the TEU calls for a general review of policies and forms of cooperation 'with the aim of ensuring the effectiveness of the mechanisms and institutions of the Community'. This was confirmed both before and during the Intergovernmental Conference, which officially started on 29 March 1996.**

The European Council in Madrid, for example, stated that the issue of efficiency of the Union should have high priority¹:

"The Conference should examine the ways and means to improve the efficiency and democracy of the Union.

The Union must also preserve its decision-making ability after further enlargement. Given the number and variety of the countries involved, this calls for changes to the structure and working of the institutions. It may also mean that flexible solutions will have to be found, fully respecting the single institutional framework and the 'acquis communautaire'. (...)"

Specifically the European Council called for a reform of :

- the codecision-procedure,**
- the decision-making and the working method of the Council of Ministers,**
- the role of the Council Presidency, and**
- the size and the status of the Commission.**

Importance is also attached to:

- the improvement of the clarity and quality of Community legislation,**
- better financial management,**
- a more effective fight against fraud, and**
- the improvement of the key role of the Court of Justice.**

According to the European Councils, the principle of efficiency has to be applied to any kind of EU action, especially in the so called second and third pillars, that is in the fields of the common foreign and defence policy as well as in justice and home affairs.

During the IGC this was confirmed by the European Councils in Turin (March 1996), Florence (June 1996) and Dublin (December 1996).²

¹ Madrid European Council, 15 and 16 December 1995, Presidency Conclusions

² See Presidency Conclusions of these European Councils

III. SOURCES

A. INSTITUTIONS OF THE UNION

1. PARLIAMENT

(a) RESOLUTION ON THE FUNCTIONING OF THE TREATY ON EUROPEAN UNION WITH A VIEW TO THE 1996 INTERGOVERNMENTAL CONFERENCE¹

The concern to improve the effectiveness of the Union is expressed at several points in the resolution on the functioning of the Treaty; first of all in the recitals:

'B. whereas at the 1996 Intergovernmental Conference the European Union will have to face up to a three-fold institutional challenge: ...

- the need to redefine the current decision-making processes, which have become excessively complex and cumbersome and often inefficient, ...

C. whereas the major deficiencies under the Treaty on European Union are: ...

- the lack of and failure to implement cohesive and effective common and foreign security and justice and home affairs policies, shortcomings that are so much the more evident since it is clear that many new Community provisions under the first pillar have worked well ...

D. whereas the European Union should thus endeavour to achieve a general improvement in its executive, legislative, budgetary and control functions within a single institutional framework, in order for it to become more efficient, more responsive to its citizens, and better able to develop the necessary policies for the future ...'

In section I on the objectives and policies of the Union, Parliament calls for the Treaty to be simplified, i.e. to be made much clearer and more logical. It also calls for 'a more effective EU foreign policy'.

The resolution goes on to request 'effective action in the field of justice and home affairs'.

Paragraph 10 of the resolution suggests that 'there should be more effective policy-making in a number of other key fields'.

'The composition of the EU institutions will have to be reviewed at the 1996 Conference if the EU is to be further enlarged, and if the EU institutions are to function properly. For each institution, however, the criterion of efficiency will have to be balanced against the need to take account of the interests of both large and small Member States'.(19)

¹ PE 212.450, 17.5.1995.

In section III on the decision-making mechanisms of the Union, the report advocates that there should only be three decision-making procedures, the codecision, assent and consultation procedures, and that the existing cooperation procedure should be abolished.(29)

This reduction in the number of procedures and the simplification of the codecision procedure (30) should result in more effective decision-making.

(b) RESOLUTION ON (i) PARLIAMENT'S OPINION ON THE CONVENING OF THE INTERGOVERNMENTAL CONFERENCE AND (ii) EVALUATION OF THE WORK OF THE REFLECTION GROUP AND DEFINITION OF THE POLITICAL PRIORITIES OF THE EUROPEAN PARLIAMENT WITH A VIEW TO THE INTERGOVERNMENTAL CONFERENCE¹

In this resolution based on the Dury-Maij-Weggen report, Parliament repeatedly comes back to the need for 'decisive progress towards a more democratic and more efficient Europe', calling for:

- an effective internal security policy,
- a simplified, codified and more comprehensible Treaty,
- more democratic and effective rules and procedures, for example by extending codecision and qualified majority voting in the Council to all legislation.

(c) RESOLUTION OF THE EUROPEAN PARLIAMENT OF 19 JUNE 1996 ON THE FLORENCE EUROPEAN COUNCIL AND THE INTERGOVERNMENTAL CONFERENCE

In this resolution the Parliament comments on the progress made in the IGC concerning the issue of efficiency. It:

"6. Regrets that the initial discussions on institutional matters, in particular where the necessary changes in the institutional balance were concerned, were marked by a tendency towards preserving the status quo and opposing change, and stresses that without the strengthening of the Community instruments and procedures and a visible reduction of the democratic deficit in the Union, it will not realistically be possible to go ahead with enlargement, even in the cases where accession is already expected and being planned; regrets in particular, that there is still marked resistance to the extension of codecision to all legislative acts and the institution of qualified majority voting as the general rule; (...)

7. Hopes that at the Florence European Council the problems relating to the new institutional order of the Union will be restored to the centre of the IGC agenda, in line with the mandate of the Turin European Council;"

¹ PE 216.237/fin. Part A, 13.3.1996.

(d) RESOLUTION OF THE EUROPEAN PARLIAMENT OF 17 JANUARY 1997 ON THE GENERAL OUTLINE FOR A DRAFT REVISION OF THE TREATIES

With this resolution the Parliament comments on the general outline for a draft revision of the Treaties submitted by the Irish Presidency of the European Council to the IGC at the Dublin European Council on 13 and 14 December 1996. With regard to the issue of efficiency it 'again expresses its strong regret that the Presidency has not put forward formal Treaty texts, and in some cases not even possible options, as regards most of the key institutional issues facing the Conference; considers that, without satisfactory solutions to these problems, the IGC will have failed completely in its central task of increasing democracy and efficiency within the existing EU, and the whole process of further EU enlargement will have been endangered'.

2. COMMISSION

(a) REPORT ON THE OPERATION OF THE TREATY ON EUROPEAN UNION¹

In the Commission's view, the work of the 1996 IGC should focus on two objectives:

- 'The Union must act democratically, transparently and in a way people can understand;
- the Union must act effectively, consistently and in solidarity.'

The Commission considers that democratic legitimacy has been strengthened, particularly by the increase in Parliament's legislative powers. 'But as decision-making has become more democratic, it has also become more complex to an almost unacceptable degree. The twenty or so procedures in use at present should be reduced to three - the assent procedure, a simplified codecision procedure, and consultation.'

'Simplification of decision-making in budgetary matters is also needed to ensure genuine interinstitutional cooperation.'

With regard to making the Community's institutional machinery more effective, 'in the Commission's view, this means paying special attention to the common foreign and security policy and justice and home affairs ... A genuine common foreign policy requires 'effective decision-making machinery; this cannot be achieved through systematic recourse to unanimity ...' The Commission considers that the coexistence of two different working methods - the Community approach and the intergovernmental approach, integration alongside cooperation - increases the complexity of the Union. In these circumstances, maintaining its effectiveness therefore implies ensuring consistency between the various pillars.'

¹ SEC(95) 731 final, 10.5.1995.

In the area of the common foreign and security policy, the Commission sees better and earlier analysis of external developments over the long, medium and short-term as one prerequisite for effectiveness.

The Commission feels that cooperation in justice and home affairs 'has been ineffectual, and not only because of the lack of coherence in the institutional framework'. The unanimity requirement 'is probably the main reason why Title VI has proved ineffective'.

(b) COMMISSION OPINION 'REINFORCING POLITICAL UNION AND PREPARING FOR ENLARGEMENT'¹

It is mainly in the area of justice and home affairs that the Commission notes the ineffectiveness of the Treaty and proposes that this should be remedied by setting clear objectives and providing for appropriate instruments and methods. To achieve the objective of freedom of movement and residence, the Commission is in favour of applying qualified majority voting and involving Parliament more closely. The Union must have more effective legal instruments and the present working structures in the Council are too complex and should be simplified.

Once again, the Commission puts forward the view that decision-making should be simplified, in particular by extending codecision which could be quicker and more effective if it were simplified, by determining time limits for first readings, by dropping the announcement of the intention to reject a proposal at the second-reading stage, and by dropping the third reading.

Parliament's assent should be reserved for 'constitutional matters' (Treaty amendments, own resources) but should no longer be applicable to legislative decisions, where codecision should be the norm.

Finally, the Commission recognizes the need for more effective implementing provisions and suggests reducing the number of procedures, having only three types of committee - the advisory committee, the management committee and the legislation committee.

(c) COMMISSION REPORT OF 3 JULY 1996 ON THE SCOPE OF THE CODECISION-PROCEDURE

In this document the Commission again stresses that the decision-making process of the EU could be made more effective by a wider application of a simplified codecision-procedure. Explicitly it deals with the link between this procedure and voting in the Council of Ministers. A combination of codecision and unanimity in the Council would substantially increase the risk of legislative procedures being blocked. On the other hand the Commission is convinced that applying codecision to all instruments adopted by majority voting would go too far and not far enough: too far, since codecision would apply to certain instruments which are definitely

¹ COM (96) 90, 28.2.1996.

matters of implementation; not far enough, since certain legislative areas would not be covered by codecision, if the unanimity rule remained applicable to them. Consequently the Commission develops a more sophisticated approach.

3. COUNCIL

(a) COUNCIL REPORT ON THE FUNCTIONING OF THE TREATY ON EUROPEAN UNION¹

In part III of the report (institutional system), chapter A is devoted to the question of democracy and efficiency². 'On the question of efficiency, the continued extension of qualified-majority voting is a positive factor. However, the juxtaposition of a large number of procedures sometimes makes it difficult for the functioning of the Union to be properly understood by the outside world. It is believed in some quarters that the lack of a real hierarchy of laws³ is affecting the decision-making process.'(16)

For the Council, 'the possibility of qualified-majority voting is a factor helping to speed up the decision-making process, not only because it offers a way out of certain deadlock situations, but also because the prospect of being placed in a minority is often the spur to seeking the necessary compromises.'

Consequently, in the Council's view, qualified-majority voting is 'a factor for efficiency in the implementation of Community policies.' (19)

As regards the codecision procedure, and conciliation in particular, the Council recognizes that it has reinforced the role of the European Parliament but points out the difficulties relating to the starting-up phase and the complexity of the procedure laid down in Article 189b.

In the case of the CFSP, the Council is aware that the results achieved so far have not satisfied everyone and that a large section of the general public 'question the effectiveness of the means offered by the Treaty ...'.

The Council concludes that 'monitoring of the implementation of the CFSP could be further systematized and made more effective, particularly through better use of the General Secretariat of the Council ...'.(68)

With regard to cooperation in the field of justice and home affairs, the Council regrets that 'the five-level structure - Council, Coreper, K.4 Committee, steering groups and working

¹ 5082/1/95, 5.4.1995.

² See briefing No 23 on the IGC and the democratic nature of the Union.

³ See briefing No 7 on the hierarchy of Community acts.

parties - has proved very cumbersome and has slowed down the decision-making process.'

(b) DRAFT MANDATE FOR THE 1996 INTERGOVERNMENTAL CONFERENCE OF 16 JANUARY 1996

With this document the Council again stressed that the IGC should have the objective of enabling the Union to function better.

4. COURT OF JUSTICE

(a) COURT OF JUSTICE REPORT ON CERTAIN ASPECTS OF THE APPLICATION OF THE TREATY ON EUROPEAN UNION (17 May 1995)

(b) CONTRIBUTION FROM THE COURT OF FIRST INSTANCE WITH A VIEW TO THE 1996 INTERGOVERNMENTAL CONFERENCE

The reports of the Court of Justice and the Court of First Instance contain various comments and/or proposals which are only indirectly related to the effectiveness of the Union in general. However, the reports raise questions of the effectiveness of judicial practice given the growing number of disputes and possible enlargement of the Union. In this context, a number of measures are proposed, for example the appointment of a assistant rapporteurs, the creation of specialist chambers and an increase in the number of judges.

5. COURT OF AUDITORS

(a) COURT OF AUDITORS REPORT TO THE REFLECTION GROUP ON THE OPERATION OF THE TREATY ON EUROPEAN UNION (May 1995)

To allow it to function more effectively, the Court of Auditors proposes that

- 'it should be possible for the Court to institute legal proceedings whenever it is prevented from carrying out its tasks satisfactorily (direct access to Community judges).
- the Court should have access to all the information required for its controls to safeguard the Union's financial interests.

It is therefore also asking for Article 188c(3) to be amended so that 'bodies which manage items of revenue and/or expenditure on behalf of the Community should be explicitly mentioned as bodies which must accept documentary controls and on-the-spot audits and should also communicate any document or information needed by the Court of Auditors to discharge its duties.'

With regard to action to combat fraud, the Court of Auditors points out that its effectiveness in this area 'is a direct function of the resources available to it and of the ease and degree of its access to all the data it needs ...'

6. COMMITTEE OF THE REGIONS

(a) OPINION OF THE COMMITTEE OF THE REGIONS ON THE REVISION OF THE TREATY ON EUROPEAN UNION¹

The Committee of the Regions sees the question of effectiveness in terms of subsidiarity, which is a basic principle of the Union. Subsidiarity is bound to strengthen 'efficiency since it presupposes that powers are exercised at the most appropriate level of government'.

The Committee therefore supports 'not only amendments designed to improve the functioning of the system, but also any changes aimed at adapting it to an enlarged Union'.

In its resolution, it says that the concrete regulation of the mechanisms in the Treaty 'needs to be improved if regional and local authorities are to play a more adequate, more effective role in the European Union;'

7. ECONOMIC AND SOCIAL COMMITTEE

(a) THE 1996 INTERGOVERNMENTAL CONFERENCE, THE ROLE OF THE ECONOMIC AND SOCIAL COMMITTEE²

For the Economic and Social Committee, efficiency is crucial for the future of the Union. 'Efficiency, rooted in a machinery which allows for decision-making which is fast, flexible and appropriate, together with solidarity and confidence, can give the integration process a new quality, as each of these aspects builds on the others.'

8. REFLECTION GROUP ON THE 1996 IGC

(a) CHAIRMAN'S PROGRESS REPORT³

To counteract citizens' alienation from the Union, the Reflection Group proposes 'a correct and systematic application of the principles of efficiency, democracy, transparency and solidarity to relations between the Unions' Institutions and between its Member States,

¹ CdR 89/95, 20.4.1995.

² CES 273/95 fin., 26.4.1995.

³ SN 509/1/95 REV 1, 1.9.1995.

and also between the Member States and the Institutions. Those principles should be put into practice through concrete measures, such as ... simplification (of texts and procedures) ... The machinery designed to preserve the Union's internal cohesion also needs to be adapted and strengthened, this step being particularly important with a view to the next enlargement.'

With regard to the institutional system, the Reflection Group affirms that 'ways must be found of increasing citizens' confidence in the European Institutions, the reform of which must be subjected to the test of more democracy, more efficiency, more solidarity and more transparency ...'.

On the question of decision-taking mechanisms, most of the Reflection Group feel that for decisions on secondary legislation, 'the enlarged Union would appear to require the extension or even the generalization of the qualified majority, for reasons of efficiency, in order to prevent the paralysis of the enlarged Union when taking decisions;'.

According to the report, the problem of efficiency also arises in relation to the weighting of votes for the purposes of qualified majorities. 'Bearing in mind that in democratic societies efficiency is inseparable from legitimacy, and that an efficient decision is not the one which is the easiest to adopt but the one that receives the most support from citizens, some members point to the growing imbalance between the population and its representation in votes by qualified majority ... in the view of those members, 'such a situation undermines the efficiency of decisions and is unacceptable in the context of future enlargement. In their view, the system should be corrected so that greater account is taken of population by means of new weightings for votes, ...'.

With regard to Title VI, i.e. justice and home affairs, 'a large majority feels that the provisions of this title are inappropriate. They see its operation as clearly defective ... and that objectives ... and a timetable for achieving them are lacking ... a true institutional driving mechanism is lacking.'

(b) REFLECTION GROUP REPORT¹

Most of the observations made in the progress report find their way into the REPORT OF THE REFLECTION GROUP published on 5 December 1995. According to the report, a large majority is prepared to consider making qualified-majority voting the general rule, on grounds of efficiency, since it will facilitate decision-making and reduce the discrepancy between the state of development attained by the internal market (qualified majority) and the policies in the social, fiscal and environmental spheres. Some members feel that efficiency will be achieved only if decisions are supported by a significant majority of the Union's citizens, which implies reweighting votes within the Council to take account of the population of Member States.

¹ SN 520/95 (REFLEX 21)

9. PRESIDENCY OF THE EUROPEAN COUNCIL

(a) THE EUROPEAN UNION TODAY AND TOMORROW. ADAPTING THE EUROPEAN UNION FOR THE BENEFIT OF ITS PEOPLES AND PREPARING IT FOR THE FUTURE. A GENERAL OUTLINE FOR A DRAFT REVISION OF THE TREATIES, BRUSSELS, 5 DECEMBER 1996

With view to the European Council in Dublin on 13 and 14 December 1996 the Irish Presidency submitted a "general outline for a draft revision of the Treaties" as was requested by the European Council in Florence in June 1996. Its function is to reflect the discussions since the beginning of the IGC on 29 March 1996 and to serve as a basis for the next phase of negotiations.

With regard to the institutional framework of the Union the text states that 'negotiations to date have shown that on some institutional issues there is already a good deal of ground'. Then it goes on to set out draft proposals in Treaty form on a number of these issues.

Concerning the European Parliament the outline suggests the streamlining of the codecision-procedure as well as the extension of its scope of application.

With regard to the effectiveness of the decision-making procedure in the Council and to the size and status of the Commission it makes clear that negotiations have not really got underway so far. It states that these complex issues will have to be settled at a relatively late stage in the conference. The document provides, however, several possible approaches in these fields.

Finally, the strengthening of the European Court of Justice, the Court of Auditors, and the Committee of the Regions is proposed.

B. GOVERNMENTS OF THE MEMBER STATES

The following section covers only those statements or positions adopted which refer expressly to the problems of effectiveness. No account has been taken of the opinions delivered in this context on other topics¹, although these may be linked to the problem of effectiveness.

¹ See hierarchy of Community acts (Briefing No 7), the co-decision procedure (briefing No 8), transparency (briefing No 18), comitology (Briefing No 21), subsidiarity and the allocation of powers (Briefing No 19), the simplification of the Treaties (study by Professor R. Bieber of 25.9.1995).

1. GERMANY

On 21 February 1995, Klaus Kinkel, German Foreign Minister, set out the Federal Government's priorities for the Intergovernmental Conference. 'The operation of the European Community, initially designed for only six Member States, needs to be adapted, in institutional and procedural terms, to a Union of fifteen Member States. For 1996, the weighting of votes of the Member States, the composition of the Commission and the rights of the EP will have to be discussed when the conference examines ways of improving effectiveness.'¹

This view is also shared by the parties in the government coalition. The CDU/CSU manifesto of 1.9.1994 for the Bundestag calls for strengthening of the Union's capacity to act. It also wants the new institutions to be more democratic and more effective and adequately to combine consistency and stability with the flexibility and elasticity inherent in such a large Union.

On the question of the CFSP in particular, in the CDU/CSU opinion² the 1996 IGC will have to fulfil a number of conditions if it is to achieve greater effectiveness in this area. In particular, the decision-making procedure will have to be improved and institutional and organizational arrangements adjusted. It suggests the setting-up of a permanent body to analyse, plan and formulate proposals and to monitor the implementation of Council decisions on the CFSP.

In the case of the third pillar, the CDU/CSU³ is in favour of gradually bringing certain justice and home affairs matters within a Community framework to overcome the inefficiency and slowness of the current intergovernmental cooperation procedures. Furthermore, all matters coming under Article K.1 must be put on a more solid institutional footing. The principle of reciprocal administrative and judicial assistance between the national authorities and the courts of the Member States is the best way of ensuring closer integration. The European Commission should also gradually be given rights of initiative to ensure that sub-national interests can be better-defined. Subsequently, in specific areas such as asylum policy, there should be a gradual transition from intergovernmental cooperation to a Community approach within the Council, which would act by a majority in accordance with Article 148 of the Treaty. As there is no such Community approach at present, the European Parliament must have a general right to be consulted in advance in all areas covered by Article K.1 of the Treaty. Given the absence of penal law or penal procedures at Union level, the document calls for the introduction of an integrated mechanism for combating crime. The CDU/CSU thus proposes an approximation and harmonization of the definition of what constitutes a criminal offence and of the procedure

¹ Summarized in English and French in 'Agence Europe', 22.2.1995.

² Discussion document of 13.6.1995: 'strengthening the European Union's capacity to act in the area of the CSFP'.

³ Discussion document of 13.6.1995 on a European constitutional state.

applicable to serious international crimes such as terrorism, the spread of arms, the trade in human beings and money laundering. On the question of the police, the document advocates giving Europol powers enabling it to act more effectively and to become a real European CID.

The two papers on the second and third pillars have been approved by the CDU/CSU governing bodies and are part of a document on guidelines for European matters with a view to the 1996 IGC which was submitted to the Federal Congress of the Christian Democratic Party in October 1995. The document also discusses the powers of the European Parliament. The EP's powers are to be extended so that in future Parliament becomes a co-legislative body with the same powers as the Council. Legislative procedures would be reduced in number, simplified and made more transparent; the Parliament/Council codecision procedure would be improved and simplified.

In 1996 the positions of the German government were further clarified. First with a joint Franco-German memorandum summarizing guidelines regarding the common foreign and security policy. It was adopted after a seminar of the Foreign Ministers in Freiburg on 27 February 1996, and it states that the efficiency, coherence, visibility, continuity, and solidarity needed to be strengthened in the third pillar. With regard to efficiency especially a reduction of the rigidities of the unanimity requirement is envisaged, for example by introducing the concept of constructive abstention as well as by using majority voting in matters of implementation. In order to improve coherence and solidarity, for example, the creation of a collective planning and analysis unit is proposed, which might be made up of staff from the Member States, the Commission and the WEU Secretariat. Concerning visibility a new function is envisaged, which gives CFSP a clear voice.

Second, on 26 March 1996 with the memorandum GERMAN AIMS IN THE INTERGOVERNMENTAL CONFERENCE was issued, again summarizing the German positions. In this document the guidelines of the Seminar in Freiburg are confirmed. In addition, the strengthening of the activities in Home and Justice Affairs (second pillar) is demanded, especially by using the 'Community method' in the fields of visa, asylum, customs, and immigration policy. With regard to institutional reform the following priorities are listed: extension of qualified majority voting in the Council of Ministers; limiting the number both of Commissioners and Parliamentarians; adapting the Troika-system of the Presidency in a way that always one of the 'big' countries is included.

On 9 December 1996 Germany and France again coordinated their negotiation positions with a joint Franco-German letter of President Jacques Chirac and Chancellor Helmut Kohl (In December 1995 they had adopted a similar but less detailed joint letter). Three priorities are identified: internal security and free movement of persons in the Union; enhancing the Union's capability in the field of foreign and security policy; and adapting the institutions and decision-making structures to enlargement. For further details see the chapter referring to France.

2. AUSTRIA

In the memorandum FUNDAMENTAL POSITIONS WITH REGARD TO THE INTERGOVERNMENTAL CONFERENCE, published by the Austrian Government on 4 July 1996, strengthening the Union's capacity to act and its effectiveness in the areas of the CFSP and Justice and Home Affairs is seen as one of the major challenges of institutional reform. Another important challenge with a view to enlargement of the Union, as the Austrian Government sees it, is consolidating and strengthening the effectiveness of implementation of Community economic, social and environmental policies.

In the case of the CFSP, it is proposed to improve planning and analysis capacity by setting up a planning unit made up of members of the general secretariat of the Council, the member countries, and the Commission. In addition, the gradual transition to majority voting is advocated.

With regard to cooperation in justice and home affairs, Austria proposes drawing up a consistent work programme and creating institutional momentum for the third pillar. To make work structures clearer and simpler, the Austrian Government advocates doing away with at least one level, i.e. abolishing the steering groups or merging the K.4 Committee with COREPER.

Special importance the Austrian government places on enhancing the efficiency of the institutional structure of the Union. With regard to the European Parliament it advocates the reduction of the legislation procedures to three procedures, namely co-decision, consultation, and assent. In addition, it would like to extend the scope of application of the co-decision procedure. Concerning the Council of Ministers it advocates the extension of majority voting on a case-by-case basis. It is also willing to discuss a reweighing of the votes of the member states. It makes clear, however, that the position of the small and the medium countries should remain a strong one. With view on the European Commission the government is willing to discuss a reduction of its size as long as every Member State has one commissioner.

3. BELGIUM

On 8 March 1996 Belgium, the Netherlands and Luxemburg submitted a BENELUX MEMORANDUM ON THE INTERGOVERNMENTAL CONFERENCE. Right at the beginning of this document they clarify their approach: '(...) the IGC must concentrate on increasing European integration, i.e. on strengthening the Union's operation in the fields of the internal market, foreign policy and cooperation on justice and home affairs (...)'.

With regard to the institutions of the EU it is stated, that there 'is need to make the Union's decision-making process running more effective, especially with enlargement in prospect'. The Benelux countries argue that the Commission should retain its strong position, for example by having one commissioner country per Member State. They believe that the codecision-procedure should be extended

to all policy areas where majority voting in the Council applies. In addition this procedure should be simplified. Furthermore, the European Parliament should become more deeply involved in decision-making in the second and third pillars 'on the basis of suitable information, promptly supplied by the Commission and the Council'. With regard to the Council they 'argue for the use of qualified majority voting to be expanded'. 'A population yardstick could be used to make certain that the qualified majority represents a majority of the Union's inhabitants.'

Concerning matters which currently come under the third pillar, the Benelux governments are in favour of far reaching reform: 'The inadequate progress of cooperation is due in particular to the institutional structure of this pillar. The IGC provides an opportunity for a thorough overhaul of that structure, both by transferring areas of action to the first pillar and by strengthening the third pillar itself'. On the whole the 'Community method' - that is the institutional, procedural and legal provisions in the first pillar - is preferred to the intergovernmental cooperation.

With regard to making the CFSP more effective, the three governments are in favour of decisions having to be taken by qualified majority. In addition they argue in favour of the establishment of an analysis and planning unit, involving staff from the Member States, the Commission and possibly the WEU Secretariat, and pooling all information necessary to devise and establish common policies. Also a special senior official appointed by the Council and agreed on by the Commission is envisaged.

4. DENMARK

On 11 December 1995 the Danish Government published its negotiating brief for the 1996 IGC titled 'BASIS FOR NEGOTIATIONS. OPEN EUROPE: THE 1996 INTERGOVERNMENTAL CONFERENCE.. In this document the governments makes clear that the 'EU must be maintained and developed as the framework for effective European cooperation'.

With regard to institutional reform from the Danish viewpoint this means:

- extension of qualified majority voting in the Council of Ministers to further areas in the first pillar while taking into account the size of the population of the different Member States;
- fewer and simpler procedures for cooperation between the Council, the Parliament and the Commission, with the Parliament exercising more uniform influence in the various spheres of influence;
- securing representation of all Member States in the Commission; and
- making the work of the Presidency more effective (here a solution could be that two Member States hold the Presidency jointly).

In the second pillar (CFSP) Denmark continues to favour an intergovernmental approach. In order to ensure effective cooperation, however, the government is

prepared 'to agree to joint actions being adopted even if one or two countries do not wish to participate'; and to support the creation of an analysis and planning unit under the aegis of the Council of Ministers. To the question of extending qualified majority voting no reference is made. The general intergovernmental approach, however, suggests a rather restricted position.

Concerning Home and Justice Affairs again an intergovernmentalist approach is favoured. According to Denmark the current structures should be made more effective, for example by simplifying the decision-making structures. Whether this means the introduction of majority voting or not the document does not make clear.

5. SPAIN

In March 1995, the Spanish Government published a document entitled '**THE 1996 INTERGOVERNMENTAL CONFERENCE. A BASIS FOR REFLECTION**'. Building on the conclusions of the European Council in Corfu that institutional reform must meet the need for greater effectiveness, the Spanish Government indicates that it sees effectiveness as covering the following issues:

- a move from unanimity to qualified majority,
- institutionalizing the second and third pillars to a greater extent,
- the organization of Council presidencies,
- the number of Commissioners,
- application of the principle of subsidiarity and a possible review of Article 235,
- the number of MEPs,
- the hierarchy of Community acts,
- the principle of adequate resources,
- simplification of codecision procedures,
- the language question,
- the decentralization of policy management,
- and the setting-up of agencies.

One year later, on 28 March 1996, the government adopted the memorandum **ELEMENTOS PARA UNA POSICION ESPAÑOLA EN LA CONFERENCIA INTERGUBERNAMENTAL DE 1996**. With regard to institutional reform the following points are important:

- the number of legislative procedures should be reduced to co-decision, consultation and assent. Co-decision's scope of application should be broadened to all areas currently falling under the cooperation-procedure;
- concerning decision-making in the Council of Ministers unanimity is advocated in the field of Treaty changes. In the field of secondary legislation, with exception in some sensitive areas, the government is prepared to agree to majority voting. It also supports the idea of reweighing the Member States' votes by taking into account the size of their populations;
- with view to enlargement the composition of the Commission needs reform. The government believes, however, that giving one Commissioner to each Member

State combined with majority voting in this body would lead to renationalization of the collegium.

In the field of foreign and security policy Spain supports:

- introducing an analysis and planning unit; and**
- loosening the unanimity requirement by means of 'constructive abstention' or "super-qualified majority voting. Majority voting should apply in matters of implementation, unanimity in questions of vital national interest.**

Concerning the question of giving CFSP a 'voice' and a 'face', Spain favours an option, in which the President of the Council is directing CFSP together with the Commission and with a special General Secretary of the Council.

The issue of improving cooperation in Home and Justice Affairs is not referred to in this document. The memorandum of March 1995, however, clarifies that the Spanish governments believes that reform is necessary in this field. The following problems are identified:

- all decisions have to be taken unanimously;**
- the distribution of competences between home and justice affairs located in the first pillar and home and justice affairs placed in the third pillar are not clear;**
- the institutional framework in the third pillar is not adequate;**
- the total absence of principles and objectives.**

The government goes on to discuss in great length how these problems might be adequately resolved.

6. FINLAND

FINLAND'S POINTS OF DEPARTURE AND OBJECTIVES AT THE EUROPEAN UNION'S INTERGOVERNMENTAL CONFERENCE IN 1996 (Report to the Parliament) of 27 February 1996 clarified the Finish negotiation position shortly before the IGC officially opened. The Finish government "wishes the European Union to develop as an association of independent states" and gives "support to efforts to improve the European Union's capability as a promoter of stable economic development , employment, and environmental protection and also supports development of the Union's Common Foreign and Security Policy in a manner that enables it to promote its objectives effectively and respond to crisis that threaten stability and security".

With regard to Home and Justice the government is convinced that the too complex decision-making structure as well as the too vage and modest objectives need reform. It is in favour of more decisions to be taken by qualified majority; strengthening the Commission's right of initiative; and giving the Court of Justice the competence of overseeing the observation of the principles of the rule of law.

Concerning the foreign and security policy the government points out that "a clear conception of its collective security interests and needs" as well as political will is more important than "the structures of organization or modalities of decision-making". Against this background an extension of majority voting regarding implementation decisions is supported. On the whole, however, Finland believes that "the interests of all Member States should be taken equitably into account". Besides the creation of a collective analysis and planning capability is supported as well as giving CFSP more visibility. Here an approach is suggested, which envisages "separate representatives in certain limited tasks" and a stronger role of the Presidency.

The government is also convinced that institutional reform is necessary, but without substantially altering the Union's institutional balance. As the most important issue in this field the voting mechanisms in the Council of Ministers are identified. Finland is willing to consider the extension of qualified-majority voting, for example to issues relating to social policy and environment as well as in the second and in the third pillars. With regard to the Commission the government on grounds of democratic legitimacy believes that all Member States should have at least one representative. Concerning the European Parliament Finland supports the strengthening of its role in the legislative process. On the other hand it is pointed out, however, that the Union's fundamental character as an association of states should be preserved. This seems to suggest that a far reaching introduction of co-decision would not be supported. Regarding the European Council the government believes that "there is no need to amend the Treaties".

7. FRANCE

The government of France has not published any official document giving a comprehensive overview on its negotiation positions in the Intergovernmental Conference. However, especially with the above mentioned joint Franco-German letter of 9 December 1996 her positions become clearer at least with regard to the most important questions.

Concerning Home and Justice Affairs the present provisions and procedures for cooperation are regarded as insufficient and ineffective. In order to enhance the situation the EU's primary aims in this field should be laid down in the Treaty and its options for action be adapted accordingly. Especially a Community policy on external borders, visas, immigration, asylum and customs cooperation should be elaborated and implemented. As another means to make progress France and Germany propose to agree on criteria and to define a definite timetable for communitarizing areas of Justice and Home Affairs. In those areas which would, for the time being, remain in the sphere of intergovernmental cooperation, they support making fundamental changes to the rules of procedure and instruments, namely the introduction of majority voting; the creation of a directive-like instrument binding on Member States; and the introduction of a co-initiative for the Commission and the hearing of the European Parliament. Finally the option of

enhanced cooperation within the institutional framework of the Union is mentioned, for example with regard to the "Schengen cooperation".

In order to improve the policies in the second pillar, the following things are proposed:

- establishing a permanent joint analysis and planning unit made up of staff from the Member States, the Commission and the WEU Secretariat;
- reinforcing the efficiency of the decision-making process and ensuring more effective implementation of decisions, especially by relaxing the consensus principle (qualified majority voting should become the general rule in matters of implementation; the introduction of "constructive abstention" would give a Member State the option to express its reservations towards certain decisions without hindering joint European action);
- introducing a "face" and a "voice" for the CFSP by entrusting a special person responsible to the Council with the function to voice the Union's CFSP positions and to head the joint planning and analysis unit;
- possibly reforming the present troika-system ("The external representation of the EU could in future take place in a new form, based on close cooperation between the Presidency, the Person charged with CFSP tasks and the Commissioner for foreign relations. The subsequent Presidency would also fully participate."); and
- moving an operationally enhanced WEU towards the EU with the aim of gradually integrating it into the Union.

Finally, a general reform of the EU institutions and decision-making structures is seen as necessary. In order to increase the efficiency of decision-making, the Council of Ministers should as far as possible use qualified majority voting. Additionally the weighting of votes in the Council should be reviewed so as to guarantee a representative balance among Member States. The future number of Commissioners should be below the future number of Member States. The legislative procedures should be reduced and simplified. In addition the extension of co-decision should be examined.

8. GREECE

On 26 March 1996 Greece submitted the CONTRIBUTION OF GREECE TO THE INTERGOVERNMENTAL CONFERENCE. This document stresses that the Union has to address several deficiencies and argues that with view to the prospective enlargement it needs more efficiency, especially in the institutional sphere.

Greece is convinced that it is necessary to strengthen the role of the European Parliament for example by reducing the different legislative procedures and by applying co-decision where the Council of Ministers decides with qualified majority. Concerning the Commission its size should be reduced to one commissioner for each Member State as a minimum. With regard to the Council the extension of qualified-majority voting is advocated, as long as this is connected with co-

decision procedure involving the Parliament on an equal basis. A reweighing of the Member States' votes in the Council, however, is opposed.

Concerning the second pillar, the creation of a unit of analysis and planning is seen as the most important means of enhancing efficiency. With such a unit it would be easier to reach consensus. In addition it is proposed to give the Commission a stronger say and to reinforce the role of the Council Secretariat.

With regard to Justice and Home Affairs the Greek government is in favour of a progressive "Communautarization", especially in the fields of asylum and immigration policies. In order to enhance efficiency it is argued for a stronger role of the Commission as well as of the European Parliament and the Court of Justice.

9. IRELAND

The government of Ireland clarified its negotiation positions in the memorandum **CHALLENGES AND OPPORTUNITIES ABROAD: IRISH WHITE PAPER ON FOREIGN POLICY** of 26 March 1996. Concerning institutional reform the following points are highlighted:

- a reduction in the number of legislative procedures, accompanied by a simplification in the operation of these procedures;
- an extension of the co-decision procedure to strengthen the role of the European Parliament;
- an extension of the provision for qualified majority voting in the Council.

Ireland points out that it would resist both making the decision-making process more intergovernmental and altering the balance among the Member States, for example by taking away the right of the Member States to nominate at least one Commissioner.

In the field of foreign and security policy the government supports the extension of qualified majority voting in matters of implementation and the creation of a planning and analysis capacity within the Council Secretariat at the service of the Presidency and the Council.

In Justice and Home Affairs the government would consider proposals to transfer immigration and asylum into the EC Treaty. Furthermore it would favour "extending to all matters in Title VI the Commission's shared right of initiative" as well as "ending the unanimity requirement".

10. ITALY

On 18 March 1996 the **POSITION OF THE ITALIAN GOVERNMENT WITH VIEW TO THE INTERGOVERNMENTAL CONFERENCE FOR THE REVISION OF THE TREATIES** was issued. The government is convinced that the IGC has to realize the "federal

vocation" of the Union and to enhance its efficiency both in institutional as well as in political matters.

With regard to the institutions it believes, that the Commission has to be reduced in its size to a number below the number of Member States ; that majority voting in the Council has to become a general rule, combined with a reweighing of the Member States' votes according to their population); that the co-decision procedure should be simplified and extended in its scope.

Concerning the efficiency in foreign and security policy the creation of a unit for analysis and planning is proposed as well as the introduction of "constructive abstention" and reinforced qualified-majority voting in certain areas. The Italian government believes that the whole structure of planning and taking decisions has to be overhauled. To that end in October 1996 it submitted detailed proposals.

The same position is taken concerning cooperation in Home and Justice Affairs. The government is in favour of defining better the areas of policies; of incorporating the Convention of Schengen into the Treaty; of rationalizing the decision-making structure; and of strengthening the role of the Court of Justice.

11. LUXEMBOURG

For the positions of Luxembourg see the joint memorandum of the Benelux countries summarized in the chapter referring to Belgium.

12. NETHERLANDS

For the Dutch positions see the joint memorandum of the Benelux countries.

13. PORTUGAL

It was not until March 1996 that an official document on the 1996 IGC was published¹. In this paper the Minister for Foreign Affairs is in favour of maintaining the existing balance between Member States and Community institutions. This also applies to the equal status of languages which should not be sacrificed on grounds of efficiency. **It argues, however, that the number of decision-making procedures should be reduced, for example by doing away with the cooperation procedure. The co-decision procedure should be extended to the fields where cooperation procedure applies. In addition it should be simplified.**

Concerning decision-making in the Council of Ministers and reweighing of votes the government stresses that it is necessary to find a compromise between the attitude of the large Member States, which would like to see a better representation

¹ Portugal and the Intergovernmental Conference to review the Treaty on European Union, March 1996.

of their population, and the fears of the small Member States of being marginalized. Regarding the Commission the government stresses to adhere to the principle that each Member State is represented.

With view to common foreign and security policy the government believes that this policy field cannot be dealt with as any other policy area, since it forms an essential aspect of the sovereignty of the Member States. It is convinced that the Union should confine itself to what has already been created with the Maastricht Treaty. In essence any extension of qualified majority voting is not seen as reasonable. On the other hand, the Portuguese government is willing to discuss the introduction of "positive abstention".

A similar attitude is displayed in the field of Home and Justice Affairs. Again intergovernmental cooperation is seen as the adequate method. This does not mean, however, that in certain areas Portugal is not willing to discuss "communautarization".

14. UNITED KINGDOM

THE MEMORANDUM ON ISSUES CONCERNING EUROPEAN SECURITY AT THE 1996 IGC, published on 2 March 1995, was the first official document produced by the United Kingdom.

While maintaining the principle that decisions should be taken solely at intergovernmental level, i.e. without participation by the European Parliament or the Commission, the British Government is in favour of a clearer and more efficient decision-making procedure for security and defence matters. It is not specified how the British Government intends to achieve this. It is opposed to creating new institutions and to the WEU being incorporated into the European Union; on the contrary, in the British view, the WEU should be developed on the basis of the existing Treaty and should become the vehicle for European defence cooperation.

A second British Government paper was published in March 1996¹. It deals not only with foreign and security policy but with all major issues being on the agenda of the IGC.

Regarding common foreign and security the positions mentioned above are confirmed. A similar approach is advocated concerning Justice and Home Affairs. The IGC should examine the question of making intergovernmental cooperation under the third pillar more efficient, for example by simplifying the structure but without amending the Treaty.

¹ A Partnership of Nations, the British approach to the European Union IGC 1996, London HMSO, March 1996.

With regard to decision-making in the Council of Ministers the government makes clear, that it opposes the notion of extending the scope of majority voting: "At a time when there is serious public concern about the centralisation of decision-making, the case has not been made for making it easier to override the objections of Member States in matters of particular sensitivity. The Government will therefore oppose further extension of qualified majority voting. We do not accept the argument that unanimity in those areas to which it currently applies would be incompatible with effective decision-making, even in an enlarged Union." The British government is willing, however, to discuss a reweighing of the votes of the Member States in the Council of Ministers.

Concerning a reform of the codecision procedure, the government takes a restrictive position, too. By stating, that the European Parliament should not gain new legislative powers, it implicitly opposes the extension of its scope of application. In contrary, the government complains that the Parliament has "sometimes used its powers under this procedure irresponsibly".

The need to work for "a more efficient, streamlined and accountable Commission which concentrates on effective enforcement of European law, proper financial management and strong action against fraud" is explicitly recognized. In order to secure this, the government argues for a college of Commissioners as large as the number of members of the Union, but with two Commissioners for the large Member States.

With regard to the need of looking at the current system the Presidency of the European Council is held, the government "sees some attractions in so-called "team presidencies" of three or four Member States presiding for a year or even longer. This could be particularly well suited to the CFSP pillar".

During the IGC the British government submitted several proposals on specific issues which further clarified the British negotiation positions. With regard to a common foreign and security policy, for example, the government is willing to discuss the establishment of a CFSP planning cell as well as the appointment of a CFSP representative.

The opposition Labour Party is also in favour of giving the Union more effective structures. In a discussion paper on the 1996 IGC, adopted by the Labour Party Conference held from 2 to 6 October 1995, it also calls for more effective action to uncover and eliminate fraud and waste of money in the CAP and PEC. Concerning the questions of qualified-majority voting and codecision, however, there is no sign that the Labour Party would take positions significantly differing from those of the Major government. In a speech on 30 January 1997 to a conference on Britain and Europe 1996 organized at Westminster by the European Policy Institute, Robin Cook, Shadow Foreign Secretary, made clear that "Labour is firmly committed to retaining the veto over matters of vital national interest and in areas of central importance such as decisions over the budget or revisions to the Treaty". Concerning the European

Parliament's powers only wider scrutiny of the Commission is mentioned. Be that as it may, because of the general election due to take place the latest on 22 May 1997 it is very difficult to see Labour's true positions on the IGC.

15. SWEDEN

In July 1995 the Swedish Government published a note titled **SWEDEN'S PRINCIPLE INTERESTS IN VIEW OF THE 1996 EU INTERGOVERNMENTAL CONFERENCE**, followed on 30 November 1995 by a **WRITTEN COMMUNICATION OF THE GOVERNMENT CONCERNING THE 1996 INTERGOVERNMENTAL CONFERENCE**. In these documents the government expresses its hope that the Union will become more open, simpler and more efficient.

Concerning institutional questions Sweden believes that it is very important to adapt the Union to the challenges of enlargement:

- regarding the Commission each Member State should have the right to nominate at least one representative;
- legislation procedures should be reduced in their number and simplified, in addition a stronger role of the Parliament in the field of financial control and in the third pillar should be envisaged;
- related to the Council of Ministers the extension of qualified majority voting to certain areas might be possible. Sweden, however, argues against the idea of weighing the vote of the Member States according to their population;
- regarding the Presidency Sweden favours to maintain the rotation system. It is willing, however, to discuss models envisaging for example a collective presidency.

In the field of foreign and security policy Sweden is convinced that reinforcement is necessary. It stresses that an abolition of the national veto in this field is currently not on the agenda. In order to improve efficiency it were necessary, in contrast, to improve the solidarity and the common political will among the Member States. To achieve this the government is willing to discuss the introduction of a special CFSP representative as long as this does not lead to badly defined areas of competences. In addition, the creation of an analysis and planning unit is supported.

In the domain of Home and Justice Affairs Sweden aims at improving cooperation, too. Detailed proposals how this could be achieved, however, have not been put forward.

For any further information on this briefing, please contact:

*Mr J. Javier FERNANDEZ / Mr Andreas LAUTZ, Task Force 1996 IGC,
Tel. 4300-2758/2442 - Fax: 4300-9027 (LUX).*